

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	:	
Credit Union National Association (CUNA)	:	
Petition for Declaratory Ruling	:	CG Docket No. 02-278
	:	
Rules and Regulations Implementing the	:	DA No. 17-798
Telephone Consumer Protection Act of 1991	:	

**COMMENTS OF JUSTIN T. HOLCOMBE**

**I. Introduction.**

I am submitting these comments in my individual capacity both as a lifelong credit union member and as a subscriber of cellular telephone services. I also submit this in my professional capacity as an attorney for other consumers who are fed up with the constant barrage of telephone calls from businesses who either ignore the TCPA's consent requirements or continuously look for new ways to skirt them. I respectfully oppose the request of CUNA.

As the son of a career credit union executive, I have been a member of credit unions for virtually my entire life. I fully support the mission of credit unions, and believe them to be far superior to banks in most cases. However, when it comes to my cellular telephone and my privacy, I don't want them, or anyone else, to employ a computer to robodial my cellular telephone number without my consent.

This Commission released its Omnibus Declaratory Ruling on July 10, 2015 emphasizing the need to "empower consumers to decide which robocalls and text messages they receive, with heightened protection to wireless consumers" and to "preserve consumer's rights to stop unwanted robocalls . . . and thus respond to the many who have let [the Commission], other

federal agencies, and states know about their frustration with robocalls.”<sup>1</sup> I respectfully ask that the Commission continue to protect consumers’ rights to be left alone and not issue any new sweeping exemptions to the TCPA.

I carry my cellular telephone on me almost all of the time. I need my cellular telephone on for personal use (e.g., so that I may be reached by the school if my child became ill or had an accident). I give my credit union a different number (a Google Voice number) to call me on. When I am available, I can forward those calls to my cellular telephone. However, when I am tied up (e.g., while driving or meeting with a client), I can disable that feature so that only people who dial my cellular telephone will reach me. I use that feature so that I have the ability of ensuring that I only receive calls on my cellular telephone number from those persons I have provided my cellular telephone number to (i.e., consented to be called) during those times I am unavailable for general business calls. Under the TCPA, Congress gave me the power, through my consent, to determine who can and cannot call my cellular telephone number using an autodialer or an artificial or prerecorded voice.

CUNA, like many others before the Commission, is now requesting a blanket exemption for its line of business to allow it unfettered access to consumers’ time and cellular telephones without consent. And like many others, CUNA asserts that its calls are somehow different and that people really want to hear its prerecorded voice. Ultimately, such content based restrictions undermine the privacy rights the statute was intended to protect, and raise concerns about the content-neutrality of such exemptions.<sup>2</sup>

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<sup>1</sup> *Federal Communications Commission Omnibus Declaratory Ruling and Order*, CG Docket No. 02-275 WC Docket No. 07-135, ¶ 43 (released July 10, 2015) (“2015 Declaratory Ruling”).

<sup>2</sup> *Cf. Wreyford v. Citizens for Transp. Mobility, Inc.*, 957 F. Supp. 2d 1378 (N.D.Ga. 2013) (TCPA prior to 2015 Amendments was content-neutral); *Brickman v. Facebook, Inc.*, 230 F. Supp. 3d 1036 (N.D.Cal. 2017) (finding that the exemption for debt collection calls made by the federal

In its 2003 Rulemaking Order, the Commission affirmed “that under the TCPA, it is unlawful to make *any call* using an automatic telephone dialing system or an artificial or prerecorded message to any wireless telephone number.”<sup>3</sup> In 2008, the Commission reaffirmed that the prohibition included debt collection calls, which comprise many of the calls CUNA members seek to make.<sup>4</sup> In 2012, the Commission found that an established business relationship exemption for calls to residences “adversely affected consumer privacy rights.”<sup>5</sup>

The calls CUNA wants to exempt are no more special than those made by anyone else. Credit Unions may receive consent from its members to call a cellular telephone number at the time the member opens an account. Credit Unions can keep track of such consent in the same manner that all others callers keep track of consent. There is no legitimate reason to grant Credit Unions a special content-based exemption. If a member wants to receive calls, the member can consent. If the calls become a nuisance, the member should be able to say “stop.” The Commission should take this opportunity to reaffirm its prior orders that 1) the TCPA’s prohibition on calls to cellular telephone numbers applies to *any call*, and 2) that consumers retain the right under the statute to control who can robocall their cellular telephone numbers by consenting (or withdrawing consent) at any time.

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government was content-based).

<sup>3</sup> *In re Rules and Regulation Implementing the Telephone Consumer Protection Act*, 18 FCC Rcd. 14014, ¶ 132 (2003) (“2003 TCPA Rulemaking Order”) (*emphasis in original*).

<sup>4</sup> *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 23 FCC Rcd. 559 (2008) (“2008 TCPA Decl. Rul.”).

<sup>5</sup> *In re Rules and Regulation Implementing the Telephone Consumer Protection Act*, 27 FCC Rcd 1830, ¶ 38 (2012) (“2012 FCC TCPA Order”).

Respectfully submitted,



by:

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